UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CORNELL UNIVERSITY, a nonprofit New York corporation, and CORNELL RESEARCH FOUNDATION, INC., a nonprofit New York corporation,

                          Plaintiffs,

            -v-   **01-CV-1974**

HEWLETT-PACKARD COMPANY, a Delaware corporation,

                          Defendant.

HEWLETT-PACKARD COMPANY, a Delaware corporation,

                          Counterclaimant,

            -v-

CORNELL UNIVERSITY, a nonprofit New York corporation, and CORNELL RESEARCH FOUNDATION, INC., a nonprofit New York corporation,

                          Counterdefendants.

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Hon. Randall R. Rader, Circuit Judge, United States Court of Appeals for the Federal Circuit, sitting by designation:

ORDER

Presently before the court are Plaintiffs Cornell University and Cornell Research Foundation, Inc.'s ("Cornell's") and Defendant Hewlett-Packard Company's ("Hewlett-Packard's") bench briefs regarding the court's claim construction and jury instructions relating to those constructions. Hewlett-Packard renews its objections to the court's construction for "means for detecting" in claims 1 or 14 and "dispatch stack" in claims 6 and 15. Hewlett-Packard also urges the court to instruct the jury as to specific definitions of α, $\alpha(S1)$, and $\alpha(S2)$.

The court declines Hewlett-Packard's request to reconstrue "means for detecting" and "dispatch stack," but agrees with Hewlett-Packard with respect to the need to instruct the jury as to the definitions of α, $\alpha(S1)$, and $\alpha(S2)$ as set forth in this court's claim construction order.

Hewlett-Packard's objections to this court's earlier claim construction order, 313 F. Supp. 2d 114 (N.D.N.Y. 2004), fall short. Procedurally, reconstruing the claims half-way through trial, after the close of Cornell's case, would be manifestly unfair to Cornell. It could also confuse the jury. Substantively, Hewlett-Packard's arguments wholly rehash those already rejected by the court. "Means for detecting," a means-plus-function limitation, is statutorily limited to the structure described in the specification for accomplishing that function and its equivalents. See 35 U.S.C. § 112, ¶ 6. As this court's Markman order explained, "means for detecting," as used in claims 1 and 14, does not require structure beyond the dispatch stack. 313 F. Supp. 2d at 141-42. In turn, the "dispatch stack" of claims 1 and 14 does not require $\beta(D)$ and I^2 fields. Id. at 133, 139. (Likewise, the court has already rejected Hewlett-Packard's theory that "dispatch stack" as used in claims 7 and 16 requires $\beta(D)$ and I^2 fields. Id. at 135, 139.) The "means for detecting" does not require the precedence count memory (PCM) because, as the court has already explained, "the PCM is a structure which facilitates the function of detecting but is not necessary to the detecting function." Id. at 140. Further, and again as noted in the Markman order, the PCM appears as an explicit limitation in dependent claims 3 and 4. Claim differentiation further suggests the PCM is not also a limitation of independent claim 1, from which claims 3 and 4 depend, nor of independent claim 14, which is "in most respects [] identical" to claim 1. Id. at 139. For these reasons, Hewlett-Packard's objection to this court's claim construction and its presumptive motion that the court reconsider its claim construction, is denied.

In contrast, Hewlett-Packard's request that the jury be instructed as to the meanings of α, $\alpha(S1)$, and $\alpha(S2)$, already adopted by this court in its Markman order and agreed to by the parties, is well-taken. Those stipulated constructions are:

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α: the number of times that a register is used as a destination register in preceding, uncompleted instructions

α(S1): the number of times that an instruction's S1 register is used as a destination register in preceding, uncompleted instructions

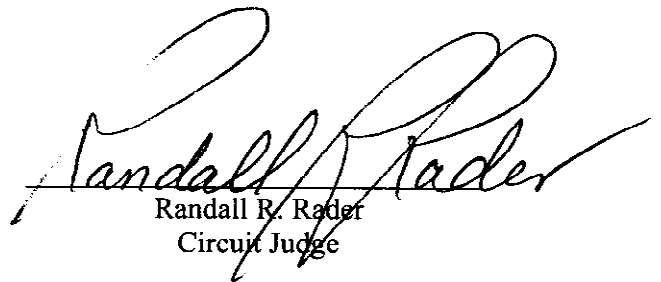α(S2): the number of times that an instruction's S2 register is used as a destination register in preceding, uncompleted instructions.

Id. at 129-30.

As Cornell points out, the parties agreed to the constructions of α as to claims 3 and 11-13 and of α(S1), and α(S2) as to claims 5 and 13, and none of these claims remains in suit. But there is no discernible reason why these constructions do not apply equally well to the tried claims. Because the court's construction of "dispatch stack" for the claims currently before the jury refers to α, α(S1), and α(S2) repeatedly, it would be helpful for the jury to have a definition of these otherwise abstract symbols. Moreover, the parties' agreed-upon constructions of these terms, adopted by the court, are consistent with the usage of these terms during trial by both parties. Accordingly, Hewlett-Packard's request that the jury be instructed as to the meanings of α, α(S1), and α(S2), as reproduced above, is granted.

IT IS SO ORDERED.

May 27, 2008
Syracuse, NY

Randall R. Rader
Circuit Judge

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